

**LODI CITY COUNCIL
REGULAR CITY COUNCIL MEETING
CARNEGIE FORUM, 305 WEST PINE STREET
WEDNESDAY, JULY 21, 2004**

C-1 CALL TO ORDER / ROLL CALL

The City Council Closed Session meeting of July 21, 2004, was called to order by Mayor Hansen at 5:05 p.m.

Present: Council Members – Beckman, Hitchcock (arrived at 5:30 p.m.), Land, and
Mayor Hansen

Absent: Council Members – Howard

Also Present: Deputy City Manager Keeter, Interim City Attorney Schwabauer, and City Clerk
Blackston

C-2 ANNOUNCEMENT OF CLOSED SESSION

- a) Actual litigation: Government Code §54956.9(a); one case; *People of the State of California; and the City of Lodi, California v. M & P Investments, et al.*; United States District Court, Eastern District of California, Case No. CIV-S-00-2441 FCD JFM
- b) Actual litigation: Government Code §54956.9(a); one case; *Hartford Accident and Indemnity Company, et al. v. City of Lodi, et al.*, Superior Court, County of San Francisco, Case No. 323658
- c) Conference with legal counsel – initiation of litigation: Government Code §54956.9(c); two cases
- d) Conference with legal counsel – anticipated litigation – significant exposure to litigation pursuant to subdivision (b) of Section 54956.9; one case; pursuant to Government Code §54956.9(b)(3)(A) facts, due to not being known to potential plaintiffs, shall not be disclosed
- e) Actual litigation: Government Code §54956.9(a); one case; *City of Lodi, a California Municipal Corporation, and Lodi Financing Corporation, a California nonprofit corporation v. Lehman Brothers, Inc. and US Bank National Association*, United States District Court, Eastern District of California, Case No. CIV. S-04-0606 MCE-KJM
- f) Actual litigation: Government Code §54956.9(a); one case; *Lehman Brothers Inc., v. City of Lodi and Lodi Financing Corporation*, United States District Court, Eastern District of California Case No. CIV-S-04-0850 FCD/JFM
- g) Actual litigation: Government Code §54956.9(a); one case; *Fireman's Fund Insurance Company v. City of Lodi, et al.*, United States District Court, Eastern District of California Case No. CIV-S-98-1489 FCD JFM
- h) Review of Council Appointee – City Clerk (Government Code §54957)
- i) Conference with labor negotiators, Mayor Hansen and Mayor Pro Tempore Beckman, regarding unrepresented employee, City Attorney (Government Code §54957.6)

C-3 ADJOURN TO CLOSED SESSION

At 5:05 p.m., Mayor Hansen adjourned the meeting to a Closed Session to discuss the above matters.

The Closed Session adjourned at 7:08 p.m.

C-4 RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

At 7:14 p.m., Mayor Hansen reconvened the City Council meeting, and Interim City Attorney Schwabauer disclosed the following actions.

In regard to Item C-2 (a), Council approved the filing of an amended complaint to State CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act) causes of action against the various potentially responsible parties (PRP) in the M&P case and to make several other amendments to that complaint; Council authorized the waiver of the 107(b) defense in the M&P case, only in so far as it relates to obtaining joint and several liability against the various PRPs by the City.

In regard to Item G2 (b), (c), (d), (e), (f), (g), (h), and (i), there was no reportable action taken in closed session.

A. CALL TO ORDER / ROLL CALL

The Regular City Council meeting of July 21, 2004, was called to order by Mayor Hansen at 7:14 p.m.

Present: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Absent: Council Members – Howard

Also Present: Deputy City Manager Keeter, Interim City Attorney Schwabauer, and City Clerk Blackston

B. INVOCATION

The invocation was given by Reverend Michael Voytek, Providence Reformed Church.

C. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Mayor Hansen.

D. AWARDS / PROCLAMATIONS / PRESENTATIONS

D-1 Awards – None

D-2 (a) Mayor Hansen presented a proclamation to Richard Jones, Executive Director of the Lodi Boys and Girls Club, proclaiming Sunday, August 1, 2004, as “National Kids Day” in the City of Lodi.

D-2 (b) Mayor Hansen presented a proclamation to Police Chief Jerry Adams and Crime Prevention Officer Carla Cole proclaiming Tuesday, August 3, 2004, as “National Night Out” in the City of Lodi. Council Member Land introduced Brooke Leoni, and Chief Adams presented her with a certificate for being the youngest block captain in the history of Lodi’s program.

D-3 (a) Ricky Gill, Mary Goad, and Dale Jones, members of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Lauren Westgate from Lodi High School. Council Member Hitchcock recognized Ricky Gill for having been appointed by the Governor to the California State Board of Education as a student member.

D-3 (b) Kathy Brown, Programs Coordinator, gave a presentation regarding the Lodi Energy Smart Workshop to be held on August 3 to showcase various energy efficiency programs and rebates.

E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Beckman second, approved the following items hereinafter set forth by the vote shown below:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

E-1 Claims were approved in the amount of \$8,568,497.97.

E-2 The minutes of June 16, 2004 (Regular Meeting), July 6, 2004 (Shirtsleeve Session), July 7, 2004 (Regular Meeting), and July 12, 2004 (Special Meeting) were approved as written.

E-3 Received report of sale of surplus equipment.

- E-4 Authorized the advertisement for transportation services for the Junior Giants on August 7, 2004, and authorized use of buses should no alternate provider be willing to perform the service.
- E-5 Adopted Resolution No. 2004-141 approving specifications and authorizing advertisement for bids for low-voltage fuses, fuse holders, and wire and authorizing the City Manager to award the bid up to \$40,000.
- E-6 Adopted Resolution No. 2004-142 authorizing the purchase of software for the Public Works Fleet Services Division from Ron Turley Associates, Inc., of Phoenix, Arizona, in the amount of \$14,535.
- E-7 Accepted the improvements under the "Well 10C Site Improvements, 790 North Guild Avenue" contract.
- E-8 Accepted the improvements under the "Main Street Storm Drain Improvement Project (Lodi Avenue to Flora Street)" contract.
- E-9 Adopted Resolution No. 2004-143 authorizing the City Manager to allocate Public Benefit Program funds in the amount of \$25,000 to extend for one year the Lodi Small Business Energy Services Partnership.
- E-10 Set public hearing for August 4, 2004, to consider the Planning Commission's recommendation of approval of the request of KB Home for a rezone from R-MD, Residential Medium Density, to PD(36), Planned Development Number 36, for The Villas, an 80-lot medium-density, single-family residential subdivision located at 449 East Harney Lane.

F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Robert Lauchland read a prepared statement (filed), in which he asked Council to direct staff to remove his family's vineyard property from the proposed White Slough Water Pollution Control Facility sphere of influence.

Mayor Hansen requested that the matter be placed on a future agenda for consideration.

Council Member Hitchcock suggested that Mr. Lauchland's concerns be included in the draft Environmental Impact Report (EIR) comments being compiled by Community Development and that it be considered at that time.

Community Development Director Bartlam reported that the draft EIR public comments have been concluded; however, comments are taken through the Planning Commission and City Council processes. He anticipated that the matter would be before the Planning Commission in late August and to Council at the first meeting in September.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider an appeal received from Key Advertising, Inc., regarding the Planning Commission's decision to deny the request of Key Advertising for a Use Permit to allow a 75-foot-high electronic display sign and a Variance to double the maximum allowable sign area from 480 square feet to 960 square feet to be located at 1251 South Beckman Road.

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, re-continued the subject public hearing to September 15, 2004, at the proponent's request, by the vote shown below:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

- G-2 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider resolution adopting the amended Impact Mitigation Fee for Streets and Roads and amended Exhibits I and J of the Development Impact Fee Update Study, October 2001.

Public Works Director Prima reported that the streets development impact fee program was adopted in the early 1990s. Both street and water impact fees had past projects that the City had already undertaken, which included the capacity to accommodate new growth. Council had accepted staff's recommendation that the City was entitled to recoup the investment from new development, so the projects were included in the fee program and have been collected ever since. When staff completed the update a couple of years ago, the component of the streets program that included those past projects was inadvertently left out, which represented approximately \$1 million worth of work and 6.85% of the total fee. Staff now recommends that this be corrected and added back in. It will result in a slight fee increase in the overall impact fees.

Council Member Hitchcock expressed concern about the price of land escalating and the impact on the City's acquisition of park land, property for fire station locations, etc. She asked Mr. Prima to prepare a report of impact fees in other cities in San Joaquin County.

Mr. Prima replied that staff intends to bring forward a recommendation to Council in the fall regarding a targeted impact fee update based on land cost.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, adopted Resolution No. 2004-144 adopting amended Impact Mitigation Fee for Streets and Roads, Exhibit One, and amended Exhibits I and J of the Development Impact Fee Update Study, October 2001. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

- G-3 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Hansen called for the public hearing to consider adoption of the Transit Division's fiscal year 2002-03 program of projects.

Public Works Director Prima explained that the Transit Division's fiscal year 2002-03 program of projects is strictly that the City use federal funds for operations, i.e. the contract with MV Transportation that pays for drivers, fuel, etc.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION / VOTE:

The City Council, on motion of Council Member Land, Beckman second, adopted the Transit Division's fiscal year 2002-03 program of projects. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

H. COMMUNICATIONS

H-1 Claims filed against the City of Lodi – None

H-2 Reports: Boards/Commissions/Task Forces/Committees – None

H-3 The following postings/appointments were made:

- a) The City Council, on motion of Council Member Hitchcock, Beckman second, made the following appointments/reappointments by the vote shown below:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

Greater Lodi Area Youth Commission

Adult Advisors:

Elizabeth Mazzeo Term to expire August 30, 2006

MaryAnn Porterfield Term to expire August 30, 2007

Student Members:

Ricky Gill Term to expire August 30, 2005

Gabi del Castillo Term to expire August 30, 2005

Erin Brink Term to expire August 30, 2006

Brooke Goodbary Term to expire August 30, 2006

Jacqueline Hamilton Term to expire August 30, 2006

Kevin Howard Term to expire August 30, 2006

Sarah McConahey Term to expire August 30, 2006

H-4 Miscellaneous – None

I. REGULAR CALENDAR

- I-1 “Adopt resolution approving the 2004-05 Financial Plan and Budget and the 2004-05 Appropriations Spending Limit”

Deputy City Manager Keeter stated that the budget presented to Council for 2004-05 solves problems on the short term and, following its adoption, work would begin to address the more challenging issues for future years. Part of this process will include reviewing programs that each department offers and prioritizing services.

Finance Director Krueger reported that the State will be taking away \$705,000 from the City in the next two fiscal years. Also negatively affecting the budget are increased retirement costs, PCE/TCE litigation expenditures, elimination of transfers from Electric Utility to the Capital Outlay Fund, and a reduction in transfer amounts related to other utility accounts. General Fund revenues in 2001-02 were \$28,323,000 and in 2003-04 were \$29,790,000; expenditures in 2001-02 were \$29,973,000 and in 2003-04 they exceeded \$33 million. This represents a 10% increase in expenditures and a 5% increase in revenues. Mr. Krueger reviewed exhibit E, section 1, page 2, of the 2004-05 2nd Year of Two Year Financial Plan and Budget (filed), which showed that a total of \$223,160 in significant expenditures requests were approved and \$1,037,318 in requests were denied or deferred.

In response to Council Member Hitchcock's question regarding the impact of budget cuts and the hiring freeze, Ms. Keeter replied that, due to the elimination of the Economic Development Coordinator position, business attraction efforts are not being done and, instead, a “reactive” focus is made on retention efforts. In addition, there is slower customer service in departments that have vacancies in front counter personnel.

Mayor Pro Tempore Beckman recommended that the position of High Tech Crime Investigator be included in the budget, as he believed it was a growing area of crime where the City is leaving its citizens unprotected.

Council Member Land agreed and noted that it is the number one issue before citizens today.

Police Chief Adams reported that he had checked with the State and Federal Community Oriented Policing Services Grant office and found that, to be competitive in a grant process, a City must demonstrate that a staff member is dedicated to the High Tech Crime program and be able to participate in a task force. He did not believe the work could be done with existing staff. He explained that currently the Police Department has general detectives whose cases are prioritized. Violent crimes and crimes against persons have the highest priority. Citizens can sometimes wait months before a detective can work on an identity theft case. A part-time staff member works mainly on check fraud cases.

Council Member Hitchcock cautioned that everything Council adds to the budget that is an ongoing expense will compound the structural deficit problem and for that reason, she would not support the suggestion to add a High Tech Crime Investigator at this time. In addition, she pointed out that the current process of not replacing positions through attrition may be leaving some critical positions vacant, while other positions of a lesser priority remained filled.

Mayor Hansen asked that, following adoption of this budget, staff immediately begin a critical evaluation of the structural imbalance and determine whether layoffs will be necessary. He did not support the suggestion to hire a High Tech Crime Investigator at this time, due to the number of position vacancies the City already has and its budget deficiencies.

Council Member Land stated that financial institutions in the community might be willing to provide assistance toward getting the High Tech Crime Investigator position filled, as they too would benefit.

Mayor Hansen asked Chief Adams to pursue Mr. Land's suggestion and negotiate the best arrangement if the financial institutions are willing to participate.

Ms. Keeter stated that Chief Adams would report back to Council if an agreement can be reached with financial institutions, and any remaining funding needed to pay for the position would be brought forward as a special allocation request.

Mr. Krueger reviewed a "blue sheet" entitled Budget Adjustments 2004-05 (filed and marked as Exhibit 1) and highlighted the following information:

- Police Department reductions totaled \$102,160;
- Fire Department reductions totaled \$576,758;
- Parks & Recreation reductions totaled \$270,489;
- Community Center reductions totaled \$62,374;
- Leisure, Cultural & Social Services reductions totaled \$332,863;
- Community Development, Economic Development, & Public Works reductions totaled \$406,055;
- City Manager's Office reductions totaled \$124,505; included in this amount was a voluntary request by the City Manager to reduce his salary by 10% (*a reduction of \$1,067 per month*); Mayor Hansen and Council Member Land felt that Council should deny the City Manager's request, as he would soon be leaving employment with the City, and Mayor Pro Tempore Beckman and Council Member Hitchcock voiced support for accepting the request;

- City Clerk's Office had an increase of \$41,897, due to election expenses;
- City Attorney's Office reductions totaled \$1,532;
- Information Systems had a savings of \$48,353 due to one vacancy;
- Human Resources reductions totaled \$34,082; and
- Facility Services reductions totaled \$51,323.

Mr. Krueger reported that one-time adjustments to expenditures totaled \$559,500 and included the following:

- Suspension of administrative leave payout for a savings of \$150,000;
- Reduction in Worker's Compensation of \$230,500; and
- An expense of \$250,000 to audit Envision Law Group.

Mr. Krueger reported that the State takeaway of \$705,000 for 2004-05 and 2005-06 was budgeted. Suspension of the property tax transfer to the Capital Outlay Fund amounted to \$1,994,000. The transfer from Capital Outlay back to the General Fund was \$2,616,000. Increasing the hiring freeze from 20 to 28 positions will result in a savings of \$520,000. Library reductions total \$32,910.

In reply to Council Member Hitchcock, Mr. Krueger acknowledged that the decrease in projected revenues was due to an overestimation of sales tax revenue and investment earnings. Ms. Keeter stated that she would get detailed information to Council on this subject.

Mr. Krueger stated that debt service in Wastewater that had not been included in the budget for 2004-05 amounted to \$1,621,000. Electric Utility Services has a savings of \$527,000, due to six position vacancies; and an overall budget increase of \$38,262. Electric meter readers and field service representatives will be transferred from the Finance Department to Electric Utility.

Ms. Keeter explained that part of the position vacancy in Electric Utility is due to the seasonal nature of the work, as they do not always have a need for full crews.

Council Member Hitchcock wanted to make sure that if the City charges its citizens for a service, which is built into the rate structure, that it provide that level of service.

Mayor Hansen felt that if there were financial savings in Electric Utility it would go to the "bottom line" and apply toward the City's attempt to build the reserve account back up. Mr. Hansen stated that his participation with Northern California Power Agency led him to believe that there would be an electric utility crises in the future, which would make it even more important to build up the reserves now.

Mr. Krueger reported that the ending fund balance in the General Fund, taking into account the transfers from the Capital Outlay Fund, would be \$4,805,000 as of June 30, 2005, which amounts to 13.9%.

Mayor Hansen stated that Council might want to consider increasing fund reserves to 25%.

Public Works Director Prima reviewed a "blue sheet" entitled 2002 Certificates of Participation (COP) Projects (filed and marked as Exhibit 2). In reference to the Capital Improvement reserve transfer to the General Fund, he stated that the money staff is recommending be transferred back to the General Fund operating reserve is discretionary money. He reported that the 2002 COP had net proceeds of \$11 million that went into the Capital Fund. At the time, the City also borrowed \$13 million to refinance the old COPs for Hutchins Street Square and Downtown. The new police building had funding sources of \$4 million from a State grant, in addition to \$4.5 million that was transferred over the course of

three years into the Capital Fund from the General Fund Operating account. That left total project funding (taking out the refinancing) of just over \$19 million. The City spent \$14 million on the police building, including land acquisition, design, etc. A study for Fire Station 2 was done at a cost of \$24,500 and design work on six projects totaled \$2,281,600. The total projects cost amounted to \$16,398,400. Now remaining in the Capital Fund is \$3,104,900, which staff is recommending be transferred back to the General Fund. He reiterated that there was \$11 million in proceeds from the COP and all of that had been spent, so this request was not an issue of taking COP money and using it for operations.

Council Member Hitchcock recalled the City borrowing approximately \$5 million more than what was needed because the interest rates were very good at the time. There was discussion that the extra money would be used for design of the projects, as well as to go toward constructions costs for one of them. Ms. Hitchcock stated she voted against it because she feared the extra money would not be used as intended. She felt that the recommendation now presented by staff, uses the additional borrowed money to pay for operating expenses of the City for the next two years, rather than dealing with the structural imbalance that exists. She read the following motion from the minutes of January 2, 2002, and asked staff where the \$5 million was:

The City Council, on motion of Mayor Pro Tempore Hitchcock, Nakanishi second, unanimously adopted Resolution No. 2002-09 designating that \$5 million of the proceeds be used only toward the design of the following six projects:

- *Public Safety Building Remodel/Expansion*
- *Parking Structure*
- *DeBenedetti Park/G-Basin*
- *Indoor Sports Facility*
- *Aquatics Center*
- *Animal Shelter Facility*

Mr. Prima answered that \$3 million of the money was in the Capital Fund and \$2 million was spent on project design work.

In reply to Council Member Hitchcock, City Attorney Schwabauer stated that he would compare Resolution 2002-09 with the resolution awarding the contract for the police building and report back to Council.

Council Member Land recalled that the purpose of setting aside \$1.5 million a year was to demonstrate that the City could pay for the debt service. Because the balance of this money (\$4.5 million) was used for the police building, he felt that there was an adequate amount of "non-debt money" in the Capital Fund to make the transfer back to the General Fund as recommended by staff.

Mr. Krueger reported that if the transfer was not made as recommended the reserve fund would have a balance of \$2.2 million, which is approximately 6.4% of expenditures.

Council Member Hitchcock suggested that staff bring back a recommendation to resolve the budget structural imbalance after seeking input from line staff, union representatives, department heads, and the public. She felt that an effort should be made to educate everyone on the responsibilities of each department so that a consensus can be developed on where the greatest need is.

In reference to Exhibit 2, Mayor Hansen stated that a \$200,000 grant was also received from the State, so the total amount under State Grants should be reflected as \$4,200,000.

Council Member Hitchcock pointed out that whether funds were used from COPs, the \$4.5 million set aside, or State grants, does not change the fact that out of the \$24.2 million COP, \$5 million had been specifically designated for design of six projects.

Mr. Krueger stated that by not transferring the money from the Capital account to the General Fund, as recommended by staff, the budget figures would change as follows:

- General Fund: The "Operating Transfers In" would be reduced by \$2,616,000 to an amount of \$5,966,255; and the ending fund balance would be reduced from the recommended amount of \$4,806,048 to an amount of \$2,190,048.
- Capital Outlay Fund: The "Operating Transfers Out" amount would be reduced by \$2,616,000 to an amount of \$2,159,954; and the ending fund balance would be increased from the recommended amount of \$8,948,597 to an amount of \$11,564,597.

PUBLIC COMMENTS:

- Betsy Fiske commented that she appreciated the hard work Council was putting into the budget.

In reply to Council Member Hitchcock, Mr. Krueger explained that the primary element in the \$1.6 million anticipated in Other Sources and Uses was additional sales tax revenues of \$400,000 from the Lowe's store that is now under construction. In addition, staff anticipates there will be an additional \$500,000 in permit fee revenues. The balance is comprised of the savings derived from budgeting payroll at the highest pay step, rather than actual amounts.

In response to Council Member Land, Ms. Keeter stated that the General Plan update cost of approximately \$1 million would be budgeted in 2005-06.

Community Development Director Bartlam reported that his department has only half its normal number of planning staff. He stated that it is not possible to manage a General Plan program update without additional permanent staff to work on it. The Housing Element update is currently in progress.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Hitchcock, Beckman second, adopted Resolution No. 2004-145 approving the 2004-05 Financial Plan and Budget (with the exclusion of the Lodi Conference and Visitors Bureau element) as recommended, with the exception of not transferring \$2,616,000 from Capital Outlay, which leaves a total fund balance of \$2,190,048, and approving the 2004-05 Appropriations Spending Limit. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

MOTION #2 / VOTE:

NOTE: Due to a potential conflict of interest related to his wife's employment with the Lodi Conference and Visitors Bureau, Mayor Pro Tempore Beckman abstained from discussion and voting on this matter.

The City Council, on motion of Mayor Hansen, Hitchcock second, adopted Resolution No. 2004-146 approving funding in the amount of \$123,500 to the Lodi Conference and Visitors Bureau for fiscal year 2004-05. The motion carried by the following vote:

Ayes: Council Members – Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

Abstain: Council Members – Beckman

RECESS

At 10:40 p.m., Mayor Hansen called for a recess, and the City Council meeting reconvened at 10:50 p.m.

I. REGULAR CALENDAR (Continued)

I-2 "Report on impacts of Large-Scale Retail Initiative"

Community Development Director Bartlam stated that the Large-Scale Retail Initiative affects buildings over 125,000 square feet, including outside retail areas. For the purposes of the report, it was assumed that the initiative includes auto dealerships; requires specific environmental review and approval by a public vote on structures over 125,000 square feet; and no General Plan land use or zoning ordinance designations would be changed by the initiative. In analyzing fiscal impacts, references were taken from Wal-Mart Supercenter studies prepared by Gregory Freeman of the Los Angeles Economic Development Corporation and the Bay Area Economic Forum. Finance Director Krueger analyzed current sales tax information from the existing Wal-Mart and other businesses in town. It is believed there would be negligible fiscal impact, either positive or negative, specific to most big-box development. If the Wal-Mart Supercenter were not built as a result of the initiative, there would be some other commercial use; because that is the way the land is currently zoned. The one area staff felt the initiative could have fiscal impact is in the expansion of auto dealerships. Mr. Bartlam reported that the City has seen substantial gains in sales tax where dealerships have expanded in Lodi. There would be no impact to the City's General Plan by virtue of the amendments outlined in the initiative. There would be no impact to the City's housing element because the initiative does not cover housing related activities. From an infrastructure standpoint, the impact is negligible. If the City's inability to attract retail resulted in that retail going elsewhere then that would have a negative effect, because the City would not be gaining the retail or the smaller users who might be in competition. The initiative does not affect uses of vacant parcels because the General Plan and zoning does not change by virtue of the initiative. He explained that the intensity of development does not change, just the size of the building. Any agricultural land designated now for future development within the City will ultimately develop in that fashion and the initiative will have no effect on it. Previous analysis has found the fiscal impact to the downtown area to be negligible. Since 1993 when the existing Wal-Mart opened, the downtown has shown a steady gain.

Council Member Hitchcock noted that the initiative proponents have stated that it does not apply to auto dealerships and have tried to legislatively make that intent.

City Attorney Schwabauer stated that his interpretation of the initiative was that it did *not* apply to auto dealerships; however, he noted that different interpretations could be applied and if there was litigation, a court might disagree with him. There were a number of things in the initiative that suggested to him it was addressing large-scale retail, not auto dealers. Among them there was reference to a finding that large scale retail tends to shut down existing strip malls that are anchored by a tenant that would be in competition with a new large-scale retail store. That is not a risk that would be associated with a large auto dealership.

PUBLIC COMMENTS:

- Treacy Elliott stated that he had read the two studies that formed the basis for staff's report and based on those readings he asked Council not to accept the report, as he believed it was flawed. The two studies address impacts in large urban areas. There is no clear evidence that the initiative includes auto dealerships, as that was never the intent of the group that authored the initiative. Including this assumption in the report creates the impression for citizens that it does include auto dealerships. He pointed out that one of the studies was commissioned and paid for by Wal-Mart.

- Joseph Pacino offered to provide Council and staff with a copy of a 119-page report on big-box grocers, which was prepared by the Orange County Business Council; authors were from the Department of Urban Planning and Economics University of California at Irvine, and the School of Public Policy and Social Research University of California at Los Angeles.

In reply to Council Member Hitchcock, Mr. Bartlam stated that the report staff prepared does not affect Council's next action on this topic. He stated that there was no way staff could have, in the six weeks that was available to prepare the report, assessed every net fiscal impact that a big-box retail development might create. He felt that staff had no other choice than to rely on previously published work.

Mr. Schwabauer explained that the purpose of the staff report was to give Council an idea of what the initiative would do and to use this information in its deliberation of whether or not to adopt the ordinance as presented or to refer it to the voters.

- Pat Patrick, President and Chief Executive Officer of the Lodi Chamber of Commerce, spoke in support of staff's report. Mr. Patrick stated that he could not envision any upside revenue potential if the initiative passed; however, he could see a lot of broad collateral damage to the local economy. He reported that in any given month 60% of the City's tax revenues generated by local auto dealerships come from people living outside of Lodi. He quoted language in the initiative that said "the City shall promote preservation of Lodi's small town and rural qualities" and countered that the corner of Lower Sacramento Road and Kettleman Lane was specifically designed for an establishment such as the Wal-Mart Supercenter. He felt that the initiative penalizes a segment of the retail community just because it is large and successful. He did not believe that Wal-Mart would compete with businesses in the downtown area. In contrast, he pointed out that if small shops and cafes were built at that location, it *would* compete with the downtown merchants. He asserted that Lodi needs a balance of large and small businesses. He expressed concern that no businesses would want to come to Lodi or expand existing facilities under the burdens imposed by the initiative.
- Robert Silva asked for clarification about the initiative, i.e. enclosed versus open space.

Mr. Schwabauer answered that it refers to any space that a business used as a retail sales area.

Council Member Land stated that the city of Turlock placed a limitation on the size of development, targeting Wal-Mart, and now Wal-Mart has filed two suits against the city. One contests the California Environmental Quality Act (CEQA) procedures and the other on a federal level for anti-interstate trade. He asked whether Wal-Mart could contest the initiative.

Mr. Schwabauer reported that when the issue of a size limitation originally came before Lodi's Planning Commission as part of the design standards process, Wal-Mart's counsel had sent a letter to the City, which stated it would sue for violating CEQA if the process proceeded. He felt that if the initiative passed, Wal-Mart would likely fight it. He explained that because it is an initiative, instead of Council sponsored ordinance, it is exempt from CEQA.

Council Member Hitchcock expressed concern that the staff report was not consistent with the City Attorney's interpretation regarding whether it affects car dealerships. In addition, she felt that the report should have not have been specific to Wal-Mart. She suggested that the report not be accepted.

Mr. Bartlam explained that when staff began the analysis for the report, the City Attorney did not yet have the opinion that it did not apply to car dealerships.

Mr. Schwabauer reiterated that staff's report is not presented for the purpose of being accepted or approved.

MOTION / VOTE:

There was no Council action taken on this matter.

VOTE TO CONTINUE WITH THE REMAINDER OF THE MEETING

The City Council, on motion of Mayor Hansen, Beckman second, voted to continue the meeting following the 11 p.m. hour, but to consider only Items I-3, I-6, and I-7. The remainder of the items will be continued to the Regular City Council meeting of August 4, 2004.

I. REGULAR CALENDAR (Continued)

- I-3 "Adopt 1) resolution accepting Certificate of Sufficiency of Petition for the Large-Scale Retail Initiative submitted by the Small City Preservation Committee; 2) resolution to place the measure on the ballot for the November 2, 2004, General Municipal Election; or adopt the ordinance as presented; and 3) resolution setting priorities for filing written arguments"

City Clerk Blackston stated that there were three matters for Council's consideration under this item. First was a resolution accepting the certificate of sufficiency from the San Joaquin County Registrar of Voters. On July 7, 2004, communication was received by the Registrar confirming the verification of the Large-Scale Retail Initiative as follows:

Number of signatures filed and verified:	3,474
Number of signatures found sufficient:	2,734

She explained that to qualify, a petition must be signed by not less than 10% of the voters of the city. The most recent report by the County showed Lodi having 26,332 registered voters and, therefore, the Large-Scale Retail Initiative petition was certified as sufficient.

The second item for Council to consider were the options now available, which are called out in Elections Code Section 9215, namely to either adopt the ordinance as presented or to submit the ordinance to the voters at the next regular municipal election.

Should Council decide to place the measure on the ballot, the third item for consideration would be a resolution setting priorities for filing written arguments and directing the City Attorney to prepare an impartial analysis. She read the following statement from Elections Code Section 9287:

If more than 1 argument for or against any measure is submitted, the City Clerk shall select one of the arguments in favor and one of the arguments against the measure. In selecting the arguments the Clerk shall give preference and priority as follows:

- 1) *City Council or member(s) of Council.*
- 2) *The individual voter - or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.*
- 3) *Bona fide association of citizens (bona fide-in good faith, honestly, without fraud or unfair dealing).*
- 4) *Individual voters who are eligible to vote on the measure.*

She reported that if Council voted in favor of placing the Large-Scale Retail Initiative on the November 2 ballot, a notice would be published in the Lodi News-Sentinel setting forth the dates fixed to receive arguments, which is preliminarily set for August 4, and the date for receiving rebuttal arguments, which is tentatively set for August 16. She asked Council for direction as to whether it wished to submit an argument or defer to other interested parties and reported that she had received communication from the Lodi Chamber of Commerce, as well as BergDavis Public Affairs indicating their desire to submit arguments.

PUBLIC COMMENTS:

- Betsy Fiske asked Council to adopt and amend the language if it feels that there is a problem with the way it is currently written. She stated that Ann Cerney suggested that Council enact a measure at its next opportunity that would deal directly with the rebuilding of structures in case of catastrophic events.

In response to questions posed by Mayor Pro Tempore Beckman, Ms. Fiske explained that Council has an opportunity to write its own ordinance. On behalf of the group who submitted the initiative, she stated that if Council were to write something it thought was more conducive to business in Lodi, they would advocate that people *not* vote for the initiative.

Mayor Hansen stated that he believed the Wal-Mart Supercenter should be built and is a project that the majority of the community supports; however, he did support the citizens' right to vote on the matter.

Council Member Land recalled that earlier in the year he promised that if the signatures were gathered he would vote to put the measure on the ballot and he intended to honor his previous statement.

MOTION #1 / VOTE:

The City Council, on motion of Council Member Land, Hansen second, adopted Resolution No. 2004-147 accepting the Certificate of Sufficiency of Petition for Large-Scale Retail Initiative. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

MOTION #2:

Council Member Land made a motion, Hansen second, to adopt Resolution No. 2004-148 calling and giving notice of the holding of a General Municipal Election on Tuesday, November 2, 2004, for the submission of a proposed ordinance regarding the Large-Scale Retail Initiative, and further amending the question on the ballot to read:

*"Shall the ordinance prohibiting the construction of new, rebuilt, or **expanded** retail structures in excess of 125,000 square feet (including outside retail sales areas) unless approved by the City Council and a majority of the voters voting at a city wide election be adopted?"*

DISCUSSION:

Mayor Pro Tempore Beckman stated that he would vote in support of the motion because state law dictates the process. He believed that the initiative was a detriment to the City's tax base and to representative government.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

MOTION #3:

Council Member Land made a motion, Beckman second, to adopt Resolution No. 2004-149 setting priorities for filing (a) written argument(s) regarding a city measure and directing the City Attorney to prepare an impartial analysis.

DISCUSSION:

Discussion ensued regarding possible authors of the arguments. Mayor Hansen and Mayor Pro Tempore Beckman indicated that they would like to add their individual names to the argument against the initiative.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

I-4 “Approve Special Allocation for expenses incurred by outside counsel/consultants relative to the Environmental Abatement Program litigation (\$200,280.57)” was ***continued to the regular meeting of August 4, due to the above vote.***

I-5 “Council discussion and appropriate action regarding a proposed amended and restated contract for legal document services (docket clerk) with Kronick, Moskovitz, Tiedemann & Girard to assist with the Environmental Abatement Program litigation and/or proposed alternatives” was ***continued to the regular meeting of August 4, due to the above vote.***

I-6 “Discussion of Council Appointee compensation and benefits – City Clerk (Government Code §54957)”

Mayor Hansen reported that Council reviewed and evaluated the City Clerk and made the recommendation that she be given a 1% increase in her deferred compensation City match, a 3% cost of living adjustment increase, and a 5% merit increase effective this pay period. He noted that this action still leaves the position considerably behind the mean of the salary survey, but is an attempt to close the gap and recognize Ms. Blackston’s job performance.

Council Member Hitchcock mentioned that Ms. Blackston was hired at the lower range of the salary, which has made it difficult to rectify because of criticism Council receives when large raises are given. She noted that the salary survey done in 2002 showed the City Clerk position 23% below market.

MOTION / VOTE:

The City Council, on motion of Mayor Hansen, Hitchcock second, adopted Resolution No. 2004-150 approving the following salary and benefit changes for the City Clerk (unrepresented) to be effective this pay period (beginning July 19, 2004): 1) increase deferred compensation City match from 2% to 3%; 2) provide cost of living adjustment increase of 3%; and 3) approve salary increase of 5%. The motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

- I-7 "Adopt resolution approving employment contract with D. Stephen Schwabauer, City Attorney"

Mayor Hansen reported that an extensive search and review process was conducted for the recruitment of a city attorney and Council found that the best candidate was Stephen Schwabauer. Council agreed that his starting salary would be \$125,000 per year effective the first pay period in July and that he be given a 1% increase in deferred compensation City match.

MOTION:

Mayor Hansen made a motion, Hitchcock second, to adopt Resolution No. 2004-151 approving the employment contract with D. Stephen Schwabauer, City Attorney, and, effective the first pay period in July, 1) increasing the deferred compensation City match from 2% to 3% and 2) setting the annual salary for the position of City Attorney at \$125,000.

DISCUSSION:

Council Member Hitchcock commented that the salary selected was the lowest on the salary survey and Council is attempting to be fair and frugal.

Mayor Hansen stated that this decision still leaves the position almost 19% below market. He recalled that Mr. Schwabauer had proven himself over the past months in serving in an interim capacity. He felt that Mr. Schwabauer was the best choice and that he would be with the community for a long time and provide a high level of service. He added that Mr. Schwabauer's integrity is above reproach and his work ethic is second to none.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Beckman, Hitchcock, Land, and Mayor Hansen

Noes: Council Members – None

Absent: Council Members – Howard

J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Hansen announced that he presented a certificate of recognition today to Ella Naylor who was born on July 21, 1904.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- Deputy City Manager Keeter anticipated that communication would be received tomorrow on the birth of Council Member Howard's baby.

M. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at 12:42 a.m., Thursday, July 22, 2004, in honor of Ella Naylor, who celebrated her 100th birthday today.

ATTEST:

Susan J. Blackston
City Clerk